
(2008) 01 BOM CK 0021
In the Bombay High Court
Case No : C.A.J.F.A. No. 2727 of 2007

Rex Bakery

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75

Citation : (2008) 3 LLJ 202

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : S.C. Naidu, instructed by C.R. Naidu and Co, for the Appellant; P.M. Palshikar, for the Respondent

Judgement

Abhay S. Oka, J.—Heard advocates appearing for the parties. Appeal is admitted on the following substantial question of law:

Whether the respondent-corporation was under an obligation to give an opportunity of being heard to the appellant before determining the amount payable by the appellant in accordance with Section 45-A of the Employees' State Insurance Act, 1948?

Considering the controversy involved, the appeal is taken up for hearing.

2. By the impugned judgment and order, an application made by the appellant u/s 75 of the said Act of 1948 for challenging an order passed on March 2, 1989 by the respondent u/s 45-A of the said Act of 1948 has been rejected by the learned Judge of the ESI Court.

3. One of the submissions made before the learned trial Judge was that the appellant was not given an opportunity of being heard before passing an order u/s 45-A. While dealing with the said submission, in paragraph No. 19 of the impugned judgment, the learned trial Judge has observed thus:

Admittedly, the inspection in the instant case is relating to the period from

January 1, 1983 to November 30, 1988. The amendment is introduced w.e.f. October, 1989 only. No doubt, after amendment in the said provision it is mandatory to give reasonable opportunity of hearing to the applicant, but prior to the amendment there was no such provision to give opportunity of being heard. So, in view of above referred judgment of Hon"ble Madras High Court with due respect in my view case law under citation placed by the learned Counsel for the applicant are not applicable to the facts of the present case. In my view, it was not mandatory to give the opportunity of being heard to the applicant before passing the order u/s 45-A of the Act. Considering all these facts, I find that the applicant failed to prove that the order dated March 2, 1989 passed u/s 45-A of the Act is illegal.

(emphasis supplied)

4. My attention has been invited to a decision of a Division Bench of this Court in the case of B.M.K Industries Pvt. Ltd. v. Employees' State Insurance Corporation and Ors. (1979) MhLJ 202. In view of the said decision, the question of law which arises in the appeal will is no longer res integra. It must be noted here that the Division Bench was dealing with provisions of the said Act of 1948 prior to the amendment which was brought into force in October 1989. The Division Bench held that the principles of natural justice will govern the proceedings u/s 45-A of the said Act of 1948.

5. Only on this ground, the impugned judgment and order will have to be quashed and set aside. The order u/s 45-A of the said Act of 1948 has been passed without giving an opportunity of being heard to the appellant and therefore, the said order dated March 2, 1989 which was subject matter of challenge before the trial Court will have to be quashed and set aside. After hearing the appellant the respondent will have to pass a fresh order u/s 45-A of the said Act of 1948.

6. Hence, I pass the following order:

(i) The impugned judgment and order dated September 10, 2007 is quashed and set aside.

(ii) The order dated March 2, 1989 passed by the respondent u/s 45-A of the Employees State Insurance Corporation Act, 1948 is quashed and set aside.

(iii) It will be open to the appellant to file a reply to the show cause notice within a period of six weeks from today.

(iv) After giving an opportunity of being heard, the concerned authority will pass an appropriate order as expeditiously as possible and preferably within a period of six months from today.

(v) All contentions of the parties on merits are kept open.

7. Appeal is allowed in above terms with no orders as to costs.